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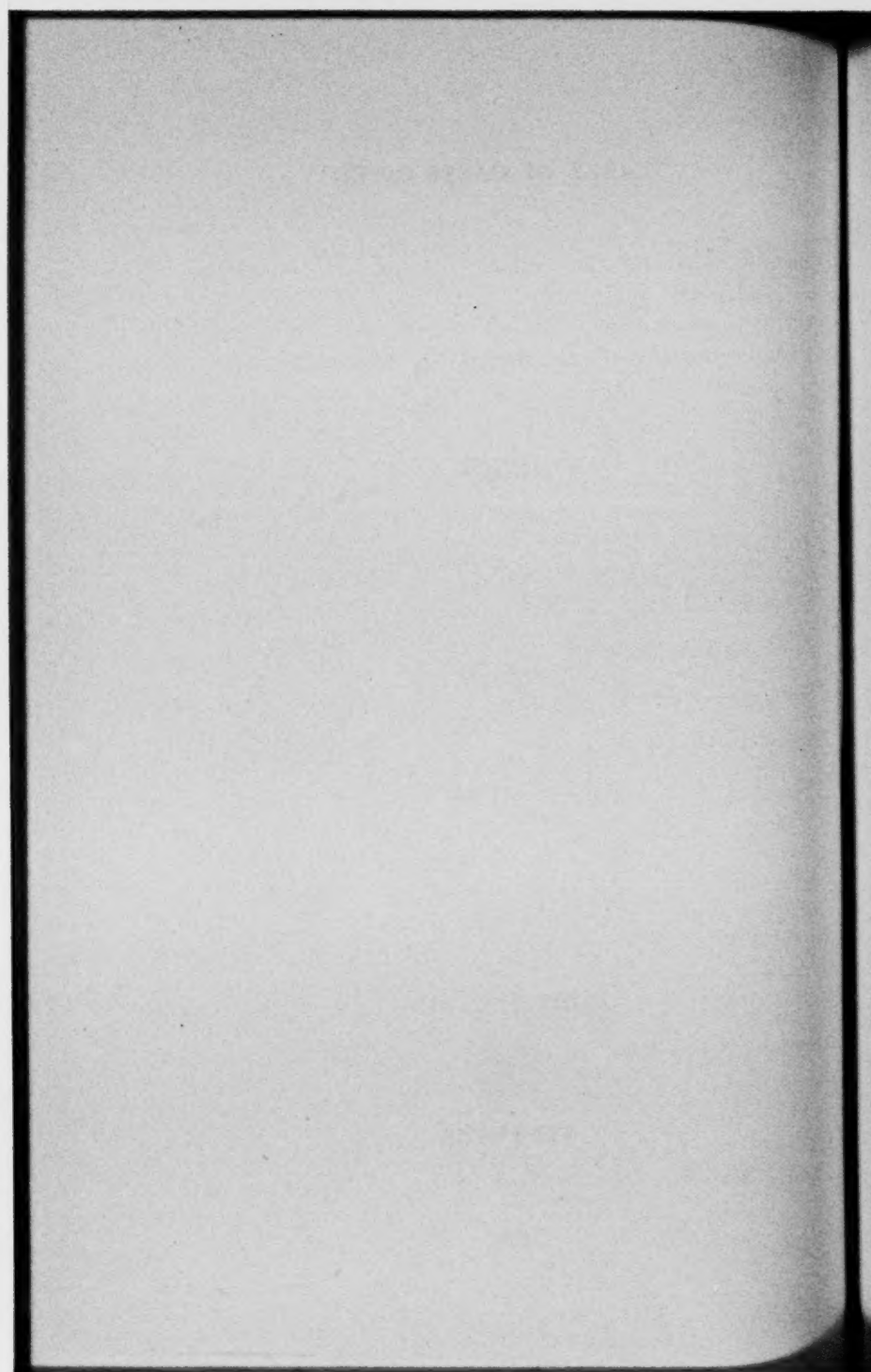


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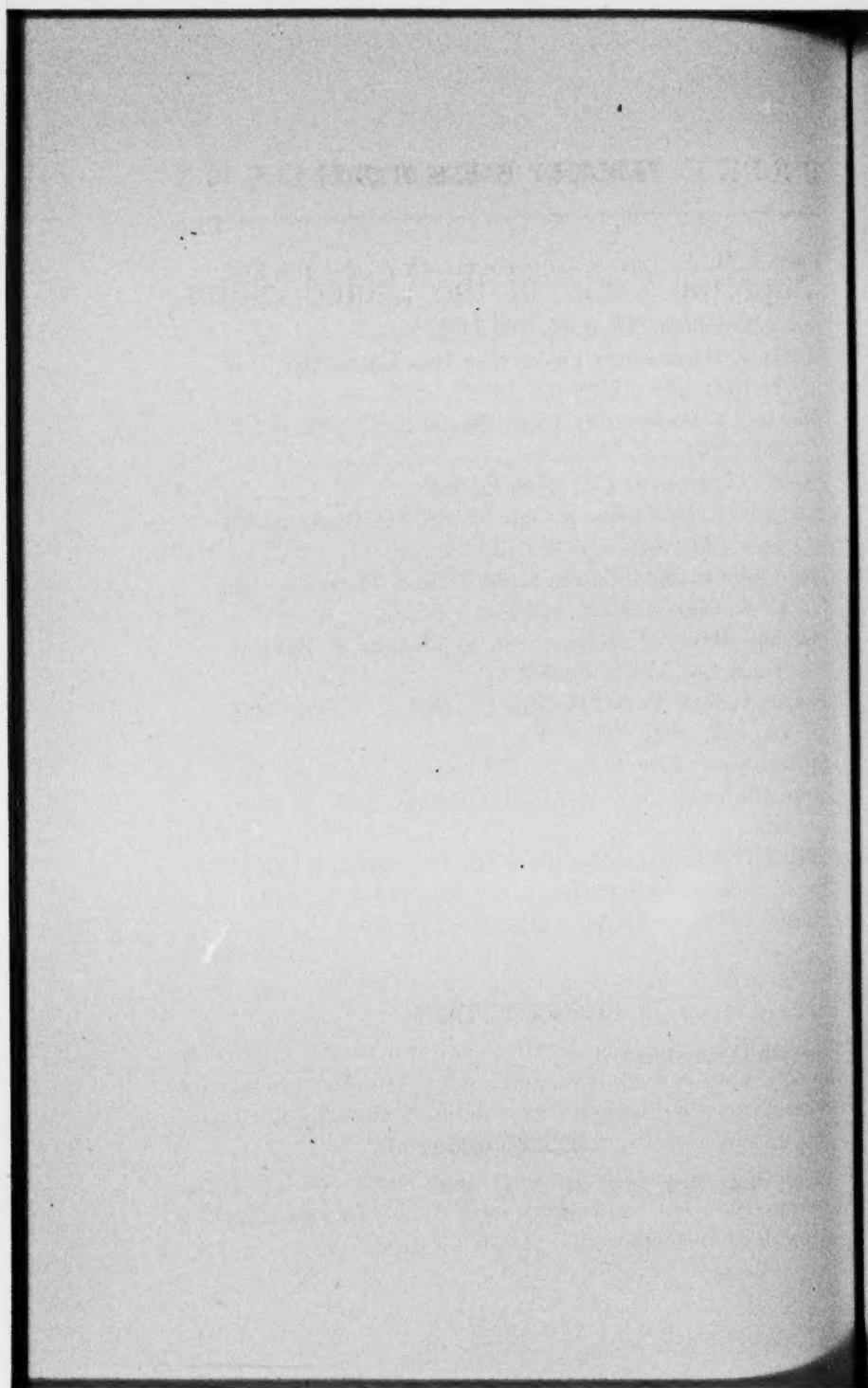
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BRIEF FOR RESPONDENT

Supreme Court of the United States

OCTOBER TERM, 1942

No. 430

COLONIAL OIL COMPANY, PETITIONER,

versus

AMERICAN OIL COMPANY, RESPONDENT

JURISDICTION

This Honorable Court should not entertain the petition herein for the following reasons:

(a) That the decision of the Circuit Court of Appeals is in conformity with other cases heretofore decided and is not in conflict with the opinions rendered by any other Federal Court where a similar question is involved.

(b) That the law, as announced by the Circuit Court of Appeals, in this case, is in conformity with that pronounced by this Court.

(c) That the decision of the Circuit Court of Appeals in the case at bar is in conformity with the law as announced by the highest Court of the State of South Carolina and by the Circuit Court of Appeals.

(d) That no new or important matter of law is involved, but what has been decided by the Circuit Court of Appeals is the established law of the land.

STATEMENT

This action is one for the recovery of damages, actual and punitive, for the alleged wrongful trespass upon real estate in which the petitioner, the plaintiff-respondent below, claimed a proprietary interest, and for the alleged wrongful conversion of certain equipment located thereon.

The respondent, the defendant-appellant below, denied the material allegations and alleged that it entered into possession under a valid written lease, in good faith, and that it had at all times offered to return to the petitioner the equipment or pay the reasonable value thereof. At the conclusion of all of the evidence the respondent moved the Court for a direction of verdict on the merits of the case and specifically moved for a direction of verdict as to punitive damages. These motions were overruled by the District Judge and a verdict was returned by the jury in favor of the petitioner for \$666.00 actual damages, and \$5,000.00 punitive damages. The question of the appropriation and use of the equipment by the respondent, independently of the question of a trespass upon the realty, was not raised or considered by the parties or by the Court on trial and, as stated in the opinion of the Court of Appeals (Record, 99), the entire theory of the case was whether or not the petitioner had an enforceable lease at the time of respondent's entry, and the question of whether or not there had been a conversion of the personalty was merely incidental to this issue. The Court of Appeals held that the evidence was susceptible of the inference that the petitioner was a tenant from year to year and that the appropriation by the respondent of petitioner's equipment was a violation of the latter's strict rights, notwithstanding respondent's offer to pay the value of the equipment in accordance with the local practice which was followed with respect to all petitioner's stations which were acquired by the respondent at or about

the same time. However, it ruled that the South Carolina authorities upon which the District Judge relied in overruling respondent's motion for a direction of verdict as to punitive damages do not justify the submission of the issue of punitive damages to the jury (Record, 98). It accordingly reversed the judgment of the District Court and remanded the case for a new trial unless petitioner shall file with the Clerk of the District Court a remittitur of the amount of the punitive damages separately included in the verdict of the jury. The petitioner now asks that this ruling be reversed.

POINTS AND AUTHORITIES

The petitioner predicates its right to have the judgment of the Court of Appeals reviewed by this Court upon two specifications of error, namely:

1. Because the judgment of the Court below was reversed in the absence of **error in law** on the part of the District Judge, and therefore such reversal constitutes a re-examination of facts tried by a jury, other than according to the rules of the common law, in violation of the Seventh Amendment and in conflict with the procedural requirements outlined by this Court.

2. Because the decision of the Circuit Court of Appeals is in violation of Act of Congress, XVIII Statutes, 318, 28 U. S. C. A., 879, providing that there shall be no reversal in a Circuit Court of Appeals for any **error in fact** and that such decision of the Court below was in conflict with the decision of this Court in *McCaughn v. Real Estate Land Title & Trust Co.*, 297 U. S., 606, 56 S. Ct., 604.

We respectfully submit that neither specification is well taken.

Specification No. 1

In taking this specification we respectfully submit that counsel for petitioner has misconceived the decision of the Court of Appeals and has misapprehended the applicable principles of law, practice, and procedure. On the trial of the case in the District Court respondent moved the Court to direct the verdict in its favor as to punitive damages on the ground that there is no evidence of willfulness, highhandedness or utter disregard of the rights of the plaintiff upon which they (the jury) could base punitive damages (R. 62). The District Judge ruled that there was some evidence of willfulness and overruled the motion (R. 62). This motion was renewed by the respondent in its motion to set aside the verdict of the jury and to direct the verdict in its favor on the ground that there was no evidence of willfulness, etc., (R. 66). This motion was likewise refused by the District Court (R. 66). In holding this ruling erroneous the Court of Appeals, after reciting a number of authorities from South Carolina and its own decisions, concluded:

"In the light of these authorities, we are satisfied that the evidence in the pending case did not justify the submission of the issue to the jury. A careful examination of the original record fails to disclose any substantial evidence that American (the respondent) or the district manager on its behalf, acted in willful, malicious or reckless disregard of the plaintiff's rights."

The petitioner contends that the District Judge, having found evidence of willfulness, both as to trespass upon the realty and as to conversion of the personalty, and the Court of Appeals having held that there was no evidence of willfulness as to trespass, it did not, specifically, reverse the District Judge in holding that there is evidence of willfulness as to the personalty and that therefore its de-

cision did not amount to a reversal of the District Court because of error in law.

As stated, the respondent's motion was directed to expel the issue of willfulness from the entire case. It is true that no separate motions were made as to trespass or conversion, but such was not necessary. There was only one primary wrong charged and the question for decision was whether the alleged delict in taking over the filling station and equipment by the respondent was characterized by willfulness.

As stated above, the Court of Appeals has held that the evidence did not justify the submission of the issue of willfulness to the jury. This holding necessarily implies that there was no substantial evidence of willfulness on the part of the respondent in connection with either trespass or the conversion.

Under the law as it obtains in South Carolina, punitive damages are not recoverable unless the alleged wrongful act was malicious or willfully done and in reckless disregard of the rights of others.¹

A rule which has been long recognized and applied by this Court, the Court of Appeals, and the Supreme Court of South Carolina, has been summarized as follows:

¹ "It is fundamental that punitive or vindictive damages can be awarded only in instances where there is something more than simple negligence or a technical conversion. There must be malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof to justify an award of punitive damages. In the absence of such elements a person injured by the tortious conduct of another may recover compensatory damages for his injury, but no more." *Cox v. Coleman*, 189 S. C., 218, 200 S. E., 762 (1938).

And see: *Eaddy v. Greensboro-Fayetteville Bus Lines, Inc.*, 191 S. C., 538, 5 S. E. (2d), 281 (1939), where the Court held:

"In order to assess punitive damages it is necessary that there be present in the testimony some evidence of willfulness or of such gross disregard of the rights of others or such gross negligence that willfulness may be inferred."

And *Gwyn v. Telephone Co.*, 69 S. C., 434, 48 S. E., 460:

"Punitive damages are recoverable only when there is misconduct and malice, and a tort committed by mistake in the assertion of a supposed right, or without wrong intent, will not warrant exemplary damages."

"If only one reasonable or legitimate inference can be drawn from the evidence, the question is one of law for the Court."²

This rule was amplified in the case cited in the footnote.³

It therefore follows that if the Court of Appeals concluded that the evidence was susceptible of only one reasonable inference and such inference was that the respondent was not guilty of willfulness, it necessarily found that the District Court had committed an "error in law" in failing to withdraw the issue of punitive damages from the jury. Whether such acts of the respondent related to trespass or conversion is immaterial because the Court of Appeals has held that there was no willfulness at all, and consequently the issue of punitive damages was improperly submitted to the jury. Upon reaching such conclusion the disposition made of the case by the Court of Appeals followed a well-established pattern of the Supreme Court of South Carolina. It has been definitely held by the Court of that state that where in an action for both actual and punitive damages the trial Judge improperly submits the issue of punitive damages to the jury and the jury finds a verdict for both actual and punitive damages, the verdict for actual damages may be allowed to stand but the verdict for punitive damages should be set aside.⁴

² *Turner v. American Motorists Ins. Co.*, 180 S. E., 55; *Young v. Hyman Motors*, 19 S. E. (2d), 109; *State Highway Dept. v. Amick's Estate*, 18 S. E. (2d), 663; *Hartman v. Baltimore & Ohio R. Co.* (C. C. A., 4), 89 Fed. (2d), 425; *M. J. Carroll, Inc., v. Gilmore* (C. C. A., 4), 103 Fed. (2d), 560; *Gunning v. Cooley*, 281 U. S., 90, 50 S. Ct., 231, 74 L. Ed., 720; *Slocum v. New York Life*, 228 U. S., 364, 33 S. Ct., 523, 58 L. Ed., 879.

³ "If it be conceded that there may be deduced by a process of usual finesse of reasoning that there is a scintilla of evidence * * *, nevertheless there is another rule, more founded upon common sense and reason, to the effect that when only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the Court, and not a question of fact for the jury." *National Bank of Honea Path v. Thomas J. Barrett, Jr., & Co.*, 173 S. C., 1, 174 S. E., 581.

⁴ *Snellgrove v. Life Ins. Co. of Virginia*, 176 S. C., 175, 179 S. E., 793; *Welch v. Missouri State Life Ins. Co.*, 176 S. C., 494, 180 S. E., 447.

We therefore submit that the judgment of the District Court was in fact reversed for an **error in law** and that the reexamination of the facts was made according to common law and was not violative of the Seventh Amendment or within the rule relied upon by the petitioner.

The respondent's motion for direction of verdict as to punitive damages went to the whole case, trespass as well as conversion and the Court has held that the actions of the respondent were not such as to subject it to vindictive damages under the law as it obtains in South Carolina and elsewhere.

Specification No. 2

We submit that what has been said in answer to Specification No. 1 is a sufficient answer to this specification. As has been shown by the cited cases, where the evidence is so clear and conclusive that reasonable men could draw but one inference therefrom, it is the duty of the trial Judge to direct the verdict. The reversal of a trial Judge for failing so to do does not amount to a reversal for an error in fact within the meaning of the Act, XVIII Statutes, 318, 28 U. S. C. A., 879.

After a careful review of the evidence the Court of Appeals concluded that there was no substantial evidence of willfulness either in the trespass or in the alleged conversion, consequently punitive damages were not recoverable. The decision below is not at variance with the decision of this Court in *McCaughn v. Real Estate Land Title and Trust Company, supra*. That case held that the Court cannot pass upon the weight of the evidence and the question raised was whether the Court's verdict was wholly without evidence to sustain it. It concluded that such question did not appear to be substantial and that the general verdict was conclusive. Here the Court of Appeals has held that

the verdict for punitive damages is wholly without substantial evidence to sustain it, and therefore the Court did not weigh the evidence but on the contrary held that there was no evidence of willfulness.

Respectfully submitted,

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